

REMARKS/ARGUMENTS

Applicant would like to thank the Examiner for the careful consideration given the present application. The application has been carefully reviewed in light of the Office Action, and amended as necessary to more clearly and particularly describe the subject matter which Applicant regards as the invention.

Claims 51-68 have been rejected based on the doctrine of "provisional obviousness-type double patenting" over claims 1-34 of pending U.S. Patent Application 10/054,479. Applicants understand this to mean "provisionally rejected" for obviousness-type double patenting. A terminal disclaimer will be filed at the appropriate time, if necessary.

Applicants appreciate the allowability of claims 57 and 58.

Claims 51-55, 59-61 and 64-67 are rejected under 35 U.S.C. 102(b) over U.S. Patent No. 3,629,521 to Puharich. Claim 51 has been amended to better distinguish from the prior art and thus, for the following reasons, the rejection has been rendered moot.

Regarding amended claim 51, Puharich does not teach "a capacitance, a part of a casing of said hearing apparatus forming a dielectricum of said capacitance, and...one conductive plate of said capacitance in contact with said part," as required. The Examiner cites a Mylar film (54) and a Mylar-aluminum-Mylar laminate (56) of Puharich as the "one plate of said capacitance" as previously required by claim 51. A plastic part (58) of Puharich is cited as the "part ... forming a dielectricum." However, the cited layers (54, 56) do not have a "conductive plate . . . in contact with said part" as now required by amended claim 51, since the conductive aluminum layer of the laminate (56) is separated from the plastic part (58) by two layers of Mylar and a fine wire mesh conductor (52). Further, the mesh conductor (52) cannot be considered to form "one conductive plate of said capacitance" since the mesh conductor is not shown to be electrically connected to any other part, and is therefore floating.

Further, regarding amended claim 51, Puhatich does not teach "a thickness of said part contacting said plate being smaller than a thickness of said part away from said plate," as now required. The plastic part (58) cited as the part of the casing by the Examiner is shown as being uniform in thickness all around, especially where it contacts and is adjacent to the mesh conductor (52) and/or the other layers (54, 56) cited as the plate by the Examiner.

For all of the above reasons, every limitation of claim 51 is not taught by the cited reference as required. Therefore claim 51 and its dependent claims are not anticipated by Puhatich.

Claims 56, 62-63 and 68 were rejected under 35 U.S.C. 103(a) over Puharich. For the following reasons, the rejection has been rendered moot by the amendment of claim 51.

For all the reasons stated above with regard to claim 51, every limitation of the claim is not taught by Puharich. Further, none of the limitations of which Puharich is deficient are suggested by Puharich or the other prior art of record. Thus, every limitation of the rejected claims is not taught or suggested by the prior art of record as required. Since claims 56, 62-63 and 68 each depend from claim 51, each of these claims is patentable over the prior art of record for at least the same reasons.

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in a condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned attorney to expedite prosecution of the present application.

Appln. No. 09/804,848
Amdt. dated March 20, 2006
Reply to Office Action dated October 19, 2005

If there are any additional fees resulting from this communication, please charge same
to our Deposit Account No. 16-0820, our Order No. 33422.

Respectfully submitted,

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